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fact sheet employment standards act



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AGRICULTURAL WORKERS

What is the purpose of the Employment Standards Act, 2000 (ESA)?

The ESA sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

What work is not covered by the ESA?

Most employees and employers in Ontario are covered by the ESA. However, the ESA does **not** apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work under a program approved by a college of applied arts and technology or university
- A secondary school student who performs work under a program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the Ontario Works Act, 1997
- Police officers (except for the Lie Detectors part of the ESA, which does apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the ESA.

For a complete listing of other work categories not governed by the ESA, please check the ESA and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the ESA.

Does the Employment Standards Act cover agricultural workers?

Yes, but there are different categories of agricultural workers, and some rules may not apply to all of them.

The four categories of agricultural workers are:

- a person employed on a farm (farm workers) (page 2 below)
- harvesters, a special category of farm workers (see page 3)
- “near farmers” (see page 8), and
- landscape gardeners (see page 9).

See the chart in the “How are You Covered by the ESA?” Fact Sheet for key minimum standards of the ESA and how they apply to each category of agricultural worker.

What is the difference between a farm worker and a harvester?

A *farm worker* is a person employed on a farm whose work is directly related to primary production of certain agricultural products. Primary production includes planting crops, cultivating, pruning, feeding and caring for livestock.

A *harvester* is employed on a farm to harvest, or bring in, crops of fruit, vegetables or tobacco for marketing or storage, and there are special rules for these employees.

What rights do farm workers have under the ESA?

The following minimum standards of the ESA apply to farm workers *:

- emergency leave (applies only to employees in businesses or organizations that regularly employ at least 50 employees)
- family medical leave
- equal pay for equal work
- parental and pregnancy leave
- regular payment of wages
- severance pay
- termination notice and pay.

Regular payment of wages means that:

- wages are paid on a recurring pay period on a recurring pay day, and
- written wage statements are provided for each pay.

(* There are rules about qualifying for some of the ESA rights listed above. For further details, see other Fact Sheets in this series, listed in *Need More Information?* at the end of this document.)

The following minimum standards of the ESA do not apply to farm workers:

- hours of work and eating periods (i.e., rules about the maximum hours of work per day and per week, daily and weekly rest periods and eating periods don't apply)
- minimum wage
- overtime pay
- public holidays
- vacation with pay.

Do harvesters have rights under the ESA?

The following minimum standards of the ESA apply to harvesters *:

- equal pay for equal work
- emergency leave (applies only to employees in companies that regularly employ at least 50 employees)
- family medical leave
- minimum wage (see *What is the minimum wage rate for harvesters?* on page 4)
- parental and pregnancy leave
- public holidays (see *What are the public holidays rules for harvesters?* on page 6)
- regular payment of wages
- severance pay
- termination notice and pay
- vacation with pay
(see *Do harvesters get vacation pay or vacation time off?* on page 7).

Regular payment of wages means that:

- wages are paid on a recurring pay period on a recurring pay day, and
- written wage statements are provided for each pay.

(* There are rules about qualifying for some of the ESA protections listed above. For further details, see other Fact Sheets in this series, listed in *Need More Information?* at the end of this document.)

Harvesters are not covered by the following minimum standards of the ESA:

- hours of work and eating periods (i.e., rules about the maximum hours of work per day and per week, length of the workday, daily and weekly rest periods and eating periods don't apply)
- overtime pay.

What rights do employees have if they work both as harvesters and as farm workers?

Sometimes, workers do both harvesting and primary production farm work. How most of the time is spent in any specific work week determines which rules apply.

For example, if the majority of the work done during a week involves harvesting, the rules for harvesters will apply (i.e., the employee will be entitled to minimum wage, and may qualify for public holiday entitlements and vacation with pay).

Or, if the majority of the work performed during a work week involves other farm work, the rules for non-harvester farm workers will apply (i.e., the employee will not be entitled to minimum wage, public holiday entitlements or vacation with pay).

What is the minimum wage rate for harvesters?

Minimum wage is the lowest hourly wage an employer can pay employees.

The **general minimum wage** rate applies to harvesters except to certain students.

Students under the age of 18:

- who work no more than 28 hours a week when school is in session, or
- who work during a school holiday (for example, March break, Christmas break, summer holidays)

are entitled to the **student minimum wage**. Students who work **more** than 28 hours a week when school is in session are entitled to the general minimum wage.

Minimum Wage Rate	January 1995	February 1, 2004	February 1, 2005	February 1, 2006	February 1, 2007
General Minimum Wage	\$6.85 per hour	\$7.15 per hour	\$7.45 per hour	\$7.75 per hour	\$8.00 per hour
Student Minimum Wage (For students under 18 and working not more than 28 hours per week or working on a school holiday.)	\$6.40 per hour	\$6.70 per hour	\$6.95 per hour	\$7.25 per hour	\$7.50 per hour

What are the rules when harvesters are paid piece-work rate?

Piece-work rate is a way of calculating pay that is based on the amount of work an employee completes, and not on the hours worked.

For example, employees are paid a set amount for each unit harvested (i.e., for each basket of apples, or bundle of tobacco).

Harvesters can be paid on a piece-work basis, but the rate must be set at a level so that with reasonable effort they can earn at least the minimum wage for all the hours they work. The piece-work rate is set according to what is standard pay in an area for the particular crop involved.

(Note: students who work as harvesters can be paid on a piece-work basis, but must be paid an amount equal to at least the student hourly minimum wage rate multiplied by the number of hours worked, even if the piece work rate was set at a level that the student should with reasonable effort have been able to earn the minimum wage for the hours and failed to do so.)

Can an employer deduct for a harvester's room or meals?

Amounts for room and/or meals (board), can be deemed to be payment of wages, but a harvester's gross pay before deductions (such as employment insurance or income tax) has to add up to at least the minimum wage for all hours worked. Room and meals can only be deemed to be paid as wages if the employee actually gets the meals and/or occupies the room.

Where the employee has been provided with room and/or board, the employer is deemed to have paid the employee the amount allowed for room and/or board. The employer must therefore pay the employee (before deductions for such things as CPP, EI or income tax) the difference between the minimum wage for all hours worked and the amount deemed to have been paid for room and/or board.

Weekly housing*

— serviced** maximum	\$99.35
— unserviced maximum	\$73.30

* housing accommodation must be reasonably fit for human habitation, have a kitchen with cooking facilities, two bedrooms or a bedroom and a living room and a private toilet and washing facilities.

** heat, light, fuel, water, gas or electricity provided at employer's expense.

Room: weekly

— private (not shared)	\$31.70
— non-private	\$15.85

Employers are only allowed to include these amounts if the room is reasonably furnished, reasonably fit for human habitation, supplied with clean bed linen and towels and has reasonable access to washroom facilities.

Meals

— each meal	\$2.55
— weekly maximum	\$53.55

Room and meals: weekly

— private room (not shared) maximum	\$85.25
— non-private maximum	\$69.40

Calculating pay when a harvester earns minimum wage and the employer provides room and board

Example 1: Week of April 4-10, 2005 (General minimum wage rate = \$7.45/hr)

An employer provides a private room for the harvester, and three meals a day. The employee worked 40 hours in the week at the minimum wage rate of \$7.45 an hour.

The employee's gross wages are \$298.00 (40 hours times \$7.45 per hour).

The maximum weekly room and board deduction the employer is allowed to make is \$85.25 (see amounts listed above).

Result: the employee's pay (before deductions for such things as CPP, EI or income tax) is \$212.75 (\$298.00 minus \$85.25).

Example 2: Week of March 6-12, 2006 (General minimum wage rate = \$7.75/hr)

An employer provides a private room for the harvester, and three meals a day. The employee worked 40 hours in the week at the minimum wage rate of \$7.75 an hour.

The employee's gross wages are \$310.00 (40 hours times \$7.75 per hour).

The maximum weekly room and board deduction the employer is allowed to make is \$85.25 (see amounts listed above).

Result: the employee's pay (before deductions for such things as CPP, EI or income tax) is \$224.75 (\$310.00 minus \$85.25).

What are the public holiday rules for harvesters?

Harvesters who work for at least 13 weeks with an employer are entitled to take public holidays off work and be paid public holiday pay. To determine how much public holiday pay an employee is entitled to, see the “Public Holidays” Fact Sheet.

However, harvesters are deemed to be employed in “continuous operations” (operations or parts of operations that do not shut down or close down more than once a week) for the purposes of entitlement to public holidays. They might be required to work on a public holiday when the public holiday falls on a day they would normally work, and they are not on vacation.

If they are required to work on the holiday, they will be paid either:

- public holiday pay plus a premium rate of pay of at least 1½ times their regular rate for the hours worked on the public holiday
or
- their regular rate for hours worked on the holiday, plus they will receive a substitute day off with public holiday pay.

Harvesters qualify for these public holiday entitlements unless they:

- fail to work *all* of their last regularly scheduled shift *before* or first regularly scheduled shift *after* the public holiday without reasonable cause*
- fail without reasonable cause to work their entire shift on the public holiday if they agreed to or were required to work that day.

(* Employees are generally considered to have “reasonable cause” for missing work when something beyond their control prevents them from working. Examples are illness, injury, medical emergencies, deaths or other emergencies (including emergencies related to family members). Employees are responsible for showing that they had a reasonable cause for missing work. If they can do so, they still qualify for public holiday entitlements.)

Harvesters who have been employed for 13 weeks but who are not entitled to public holiday pay or a substitute day off with public holiday pay for the above reasons are still entitled to be paid at least 1½ times their regular rate for hours worked on a public holiday.

For more information, see the “Public Holidays” Fact Sheet.

Do harvesters get vacation pay or vacation time off?

After being employed for 13 weeks, harvesters are entitled to vacation with pay. This means that harvesters are eligible for a minimum of two weeks of vacation with pay after each 12 months of employment, starting from the date they are hired.

If the employer establishes a 12-month vacation entitlement year that does not start on the date of the employee’s hire, the harvester is also entitled to a pro-rated amount of vacation with pay for the period (stub period) before the 12-month vacation entitlement year begins.

Vacation pay is calculated as at least four per cent of the harvester's "gross" wages (excluding vacation pay and before any deductions, including room and board) earned in the period for which the vacation is being given.

Employees who do not complete either the stub period or 12-month vacation entitlement year don't qualify for vacation time. However, harvesters who are employed for at least 13 weeks earn vacation pay for every hour worked in harvesting, so they will be entitled to at least four per cent of those wages as vacation pay.

For further details, including information about when and how vacation may be taken, see the "Vacation" Fact Sheet.

Are "near farmers" covered by special rules?

Yes, special rules apply to agricultural workers in the "near farming" category, whose employment is directly related to:

- mushroom growing
- the growing of flowers or trees and shrubs for the retail and wholesale trade
- the growing, transporting and laying of sod
- the breeding and boarding of horses on a farm
- the keeping of fur-bearing mammals (as defined in the *Fish and Wildlife Conservation Act*, 1997, and including foxes, lynxes, martens, mink and raccoons) for propagation or commercial production of pelts.

Near farmers are covered by the following minimum standards of the ESA*:

- emergency leave (applies only to employees in companies that regularly employ at least 50 employees)
- family medical leave
- equal pay for equal work
- minimum wage
- parental and pregnancy leave
- regular payment of wages
- severance pay
- termination notice/pay
- vacation with pay.

Regular payment of wages means that:

- wages are paid on a recurring pay period on a recurring pay day, and
- written wage statements are provided for each pay.

(* There are rules about qualifying for some of the ESA protections listed above. For further details, see other Fact Sheets in this series, listed in *Need More Information?* at the end of this document.)

However, near farmers are not covered by the following minimum standards of the ESA:

- hours of work and eating periods (i.e., rules about the maximum hours of work per day and per week, daily and weekly rest periods and eating periods don't apply)
- overtime pay
- public holidays.

What are the rules for landscape gardeners?

Special rules apply to landscape gardeners. (The same rules also apply to people employed to install and maintain swimming pools.)

Parks gardeners and greenskeepers on a golf course are considered to be "landscape gardening" employees. People working on retaining walls, sprinkler systems and those who spray roads and industrial sites for weeds are not "landscape gardening" employees, nor are the office workers in a landscape gardening company.

Landscape gardeners are covered by the following minimum standards of the ESA*:

- emergency leave (applies only to employees in companies that regularly employ at least 50 employees)
- family medical leave
- eating periods and daily, weekly and biweekly rest periods (see the "Hours of Work & Overtime" Fact Sheet for details)
- minimum wage
- parental and pregnancy leave
- regular payment of wages
- severance pay
- termination notice/pay
- vacation with pay.

Regular payment of wages means that:

- wages are paid on a recurring pay period on a recurring pay day, and
- written wage statements are provided for each pay.

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Landscape gardeners are not covered by the following minimum standards of the ESA:

- hours of work provisions, although the provisions regarding eating periods and rest periods do apply
- overtime pay
- public holidays.

Are canning, processing or packing employees covered by the ESA?

Yes, but this work is not considered to be agricultural work or farm work under the ESA.

Anyone whose work is directly related to the canning, processing or packing of fresh vegetables or fruits, or their distribution by the canner, processor or packer is entitled to all minimum ESA standards*, including:

- emergency leave (applies only to employees in companies that regularly employ at least 50 employees)
- family medical leave
- hours of work protections (including daily and weekly/biweekly rest periods and eating periods)
- minimum wage
- regular payment of wages
- overtime pay **
- parental and pregnancy leave
- public holidays
- vacation with pay
- severance pay
- termination notice/pay.

Regular payment of wages means that:

- wages are paid on a recurring pay period on a recurring pay day, and
- written wage statements are provided for each pay.

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(** Overtime pay usually applies to the hours worked above 44 hours in a work week. Seasonal canning, processing or packing employees (employees who work not more than 16 weeks in a calendar year for an employer) are only entitled to overtime for each hour over 50 hours worked in a work week.)

What information must an employer give an agricultural worker?

Agricultural workers, like other employees, must get certain information in writing from their employers. This written information *must* include a written wage statement for each pay period, on or before the employee's pay day.

The wage statement must set out:

- the pay period for which the wages are being paid
- the wage rate, if there is one

- the gross amount of wages and—unless the employee is given the information in some other manner, such as in an employment contract—how the gross wages were calculated
- the amount and purpose of each deduction
- deemed amounts for room and board
- the net amount of wages.

Please see *What kind of information must employers keep?* below for details about vacation time and vacation pay information and about the employee's right to this information.

What kind of information must employers keep?

All employers in Ontario, including anyone who employs agricultural workers, must keep written records about each person they hire.

Employee records—which can be maintained either by employers or by someone else on their behalf—must be readily available for inspection, and must be kept for three years.

Each employee's written record must contain:

- the employee's name, address and starting date of employment
- the number of hours the employee worked in each day and each week
(Note: See the exceptions listed below)
- the date of birth if the employee is a student under 18
- information contained in the employee's wage statements
- all documents relating to pregnancy, parental or emergency leave
- the vacation time earned since the date of hire but not taken before the start of the vacation entitlement year
- the vacation time earned during the vacation entitlement year (or stub period, if the employer establishes an alternative vacation entitlement year)
- the vacation time taken (if any) during the vacation entitlement year (or stub period)
- the balance of vacation time remaining at the end of the vacation entitlement year (or stub period)
- the vacation pay paid during the vacation entitlement year (or stub period) and how that vacation pay was calculated.

(NOTE: An employee is entitled to information about his or her vacation time and pay entitlement once with respect to each completed vacation entitlement year or stub period, on written request to the employer. See the "Vacation" Fact Sheet for more details.)

There are two exceptions to the rule for hours of work records

1. If an employee receives a fixed salary for each pay period, and the salary doesn't change except if the employee works more than 44 hours in a week, the employer is not required to record the number of hours the employee would have worked in each day and each week, but the employer is required to record:
 - the employee's hours *in excess* of those hours in the employee's regular work week, and
 - the number of hours in excess of eight per day—or in excess of the hours in the employee's regular workday, if that's more than eight hours.
2. Employers aren't required to record the hours of work for employees who are paid a fixed salary if they are exempt from overtime pay and the provisions for maximum hours of work and required rest periods.

What if the employer does not follow the ESA?

If an employee thinks the employer is not complying with the ESA, he or she can call the Employment Standards Information Centre at 416-326-7160 or toll free at 1-800-531-5551 for more information about the ESA and how to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer, including an order to comply with the ESA. The ministry has a number of other options to enforce the ESA, including requesting voluntary compliance, issuing an order to pay wages, an order to reinstate and/or compensate, a notice of contravention, or issuing a ticket or otherwise prosecuting the employer under the Provincial Offences Act.

This Fact Sheet provides general information about agricultural workers as set out in the Employment Standards Act, 2000 (ESA) and its regulations. For complete information please refer to the ESA and the regulations.

For More Information

If you have questions about the Employment Standards Act, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160, toll free 1-800-531-5551, TTY 1-866-567-8893, or visit a ServiceOntario Government Information Centre in person.

Information and ESA publications can be found at the Employment Standards section of the Ministry of Labour's website, www.labour.gov.on.ca.

ESA Fact Sheets are available on the following subjects:

Agricultural Workers	Minimum Wage
Domestic Workers	Pregnancy Leave & Parental Leave
Emergency Leave	Public Holidays
Family Medical Leave	Retail Workers
Frequently Asked Questions	Role of the Ministry of Labour
Homeworkers	Termination of Employment & Severance Pay
Hours of Work & Overtime	Vacation
How Are You Covered by the ESA?	What Young Workers Should Know
How to File a Claim	

This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the Employment Standards Act, 2000 (ESA) and regulations.

The Employment Standards Information Centre can be reached at 416-326-7160, toll-free at 1-800-531-5551, or, for Hearing Impaired TTY, at 1-866-567-8893.

Information on the ESA can also be found at the Employment Standards section of the Ministry of Labour's website: www.labour.gov.on.ca.

You can order copies of the ESA and related information materials from: Publications Ontario, 1-800-668-9938; Hearing Impaired TTY 1-800-268-7095, or the Ontario government E-Laws website at www.e-laws.gov.on.ca.



